

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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PAMELA MILLER; RANDY HOWARD;  
and DONNA PATTERSON; on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

BASIC RESEARCH, LLC; DYNAKOR  
PHARMACAL, LLC; WESTERN  
HOLDINGS, LLC; DENNIS GAY; DANIEL  
B. MOWRY, Ph.D.; MITCHELL K.  
FRIEDLANDER; and DOES 1 through 50,

Defendants.

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MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANTS'  
MOTION TO STAY PROCEEDINGS  
PENDING APPEAL

Case No. 2:07-CV-871 TS

This matter is before the Court on Defendants' Motion to Stay Proceedings Pending Appeal. For the reasons discussed more fully below, the Court will deny Defendants' Motion.

I. BACKGROUND

This is a class action that arises out of the advertising for and sale of a weight-loss dietary supplement called Akävar 20/50. Although this matter is currently set for trial on April 7, 2014,

the parties met with a mediator in September 2012 and subsequently informed the Court that the parties had reached a settlement.

At some point before the parties were able to submit the settlement to the Court for preliminary approval, the relationship between the parties appears to have soured.

Communication dropped off, and on December 18, 2012, counsel for Defendants filed a status report with the Court, stating that further negotiations were necessary and that “significant disagreement exists, at present, between the Parties to other material issues of the settlement.”<sup>1</sup>

Plaintiffs responded by filing a motion to enforce the parties’ nationwide class action settlement.

The Court heard oral argument on the issue, and on March 22, 2013, issued an order granting Plaintiff’s Motion. At that time, the Court ordered the parties to file a joint motion for preliminary approval of the settlement on or before April 19, 2013.<sup>2</sup>

On April 1, 2013, Defendants initiated an appeal with the Tenth Circuit. On April 8, 2013, Defendants filed the Motion to Stay that is currently before the Court.

## II. DISCUSSION

Fed. R. Civ. P. 62(c) provides:

While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party’s rights.

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<sup>1</sup>Docket No. 261, at 2-3.

<sup>2</sup>Docket No. 280, at 15.

The factors the Court should consider when determining whether to issue a stay are: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”<sup>3</sup>

Considering Defendants’ arguments and the facts of this case in light of the above standards, the Court is not persuaded that a stay is appropriate. Nevertheless, the Court recognizes that the settlement approval and class notification process requires cooperation between the parties, and that such cooperation is unlikely to be forthcoming until after the matter is decided on appeal. Therefore, the Court will exercise its discretionary powers over the deadlines before the Court to suspend the April 19, 2013 due date for submission of a joint motion for preliminary approval of the settlement until the Tenth Circuit has ruled on Defendant’s appeal of the Court’s March 22, 2013 order.

### III. CONCLUSION

It is therefore

ORDERED that Defendants’ Motion to Stay (Docket No. 284) is DENIED. It is further


ORDERED that the April 19, 2013 deadline for submission of a joint motion for preliminary approval of the settlement is hereby suspended until the Tenth Circuit has ruled on Defendant’s appeal of the Court’s March 22, 2013 order.

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<sup>3</sup>*Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th Cir. 1996).

DATED April 16, 2013.

BY THE COURT:



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TED STEWART  
United States District Judge